Health and Safety at Work (Tobacco Smoking)

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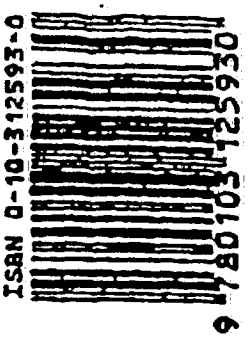

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To amend the Health and Safety at Work etc. Act 1974 so as to provide for the control of smoking in places of work; and for connected purposes.

Presented by Mr George Foulkes
supported by

Mr Roger Sims, Mr Sam Galbraith, Mr David Alton, Dr Lewis Moonie, Mr Jerry Hayes, Mr John Maxton, Sir John Stanley, Mr Henry McLeish, Mr Alistair Darling and Maria Fyfe.

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Amend the Health and Safety at Work etc. Act 1974 so as to provide for the control of smoking in places of work; and for connected purposes. A.D. 1993.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Extension of purposes of Health and Safety at Work etc. Act 1974.

1. After section 1(1)(a) of the principal Act (preliminary provisions) there shall be inserted—

"(aa) ensuring that such persons while working on any enclosed premises other than exempt premises are able to do so in an environment where smoking does not take place;".

General duties of employers as to control of smoking in places of work.

2.—(1) After section 2(2)(e) of the principal Act (general duties of employers to their employees) there shall be inserted—

"(f) the prevention of smoking, whether by employees or other persons having access to the place of work, in any place of work consisting of enclosed premises (not being exempt premises) under the employer's control except as may be permitted under section 9A of this Act.".

(2) In section 2(3) of the principal Act, after the word "employees" where it first occurs, there shall be inserted the words "(including the establishment of a non-smoking policy)".

General duty of persons concerned with premises as to control of smoking.

3. In section 4 of the principal Act (general duties of persons concerned with premises to persons other than their employees), after the words "such measures", there shall be inserted the words "(including measures to prevent smoking on the premises (unless they are exempt premises) by persons using them, except as may be permitted under section 9A)."

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Further provisions as to smoking and the rights of employees.

4. After section 9 of the principal Act there shall be inserted the following:—

"Designation of areas for smoking.

9A. Subject to any health and safety regulations under section 15(6A)(d) of this Act, an employer, or a person who has control of premises to which section 4 of this Act applies, may designate part (but not the whole) of a place of work as an area where smoking is permitted but nothing in this Act shall require an employer or such a person to designate such an area.

Prohibition of smoking except in designated areas.

9B. No person shall smoke in a place of work consisting of enclosed premises (not being exempt premises) to which this Act applies except in an area designated under section 9A above.

Rights of employees.

9C.—(1) No employee shall be required by his contract of employment or otherwise to work in a smoking area.

(2)(a) Any employee shall be deemed to have been unfairly dismissed for the purposes of the 1978 Act if—

(i) he is dismissed and the reason for the dismissal is his refusal to work in a smoking area; or

(ii) he terminates his contract of employment with or without notice and the reason for the termination is the failure of his employer to provide him with work in a non-smoking area.

(b) For the purpose of this subsection "reason" means the principal reason.

(3) Every employee shall have the right not to have action (short of dismissal) taken against him by his employer for the purpose of compelling him to work in a smoking area.

(4) Subsection (1) of section 140 of the 1978 Act (restrictions on contracting out) shall apply to any provision whereby an employee is required to forego his rights under this section.

(5) This section does not apply to an employee who is required by his contract of employment to work on exempt premises.

(6) For the purposes of this section—

"the 1978 Act" means the Employment Protection (Consolidation) Act 1978;

"non-smoking area" means so much of any premises as is not a smoking area; and

"smoking area" means an area designated under section 9A of this Act and, in the case of any failure by the occupier of a workplace to comply with the duties as to smoking imposed on them by section 2(3)(f) or, as the case may be, section

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4 of this Act, the expression shall include any part of the workplace where smoking regularly takes place".

Health and Safety regulations as to smoking.

5. After section 15(6) of the principal Act (health and safety regulations) there shall be inserted the following:—

"Regulations as to smoking.

6A The Secretary of State shall make health and safety regulations—

(a) with respect to the designation of smoking areas for the purposes of section 9A of this Act;

(b) specifying categories or descriptions of premises as exempt premises;

(c) specifying or providing for the determination of the maximum permitted size, area or capacity of areas designated or to be designated under section 9A in relation to the total area or capacity of the premises of which any such area forms part;

(d) prohibiting the designation of areas under section 9A in such categories of premises as are specified in the regulations;

(e) requiring the consultation of employees as to the designated areas under section 9A and the adoption of non-smoking policies in places of work;

(f) prescribing the design of signs, giving notice of requirements of the provisions of this Act and of the regulations as to smoking, including the wording and symbols to be used on such signs;

(g) making requirements as to the provision within enclosed places of work of signs such as are mentioned in paragraph (d) of such number and size, and in such positions, as may be specified in the regulations; and

(h) regulating or prohibiting the provision of ashtrays at the entrances to or within enclosed places of work.".

Offences.

6. In section 33 of the principal Act (offences)—

(a) after subsection (1)(b), there shall be inserted—

"(bb) to contravene section 9B;"; and

(b) in subsection (2), after the word "paragraph" where it first occurs there shall be inserted "(bb),".

Amendment of section 53 of 1974 Act.

7. In section 53(1) of the principal Act (general interpretation of Part I):—

(a) after the definition of "the Executive" there shall be inserted—

""exempt premises" means premises specified as exempt premises in health and safety regulations made under section 15(6A)(b) of this Act;";

(b) at the end of the definition of "premises" there shall be inserted "and, for the purposes of so much of this Act as relates to smoking, premises are enclosed if they are situated between a

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floor and a ceiling or roof and are enclosed on all sides by walls or windows (exclusive of doors or passage ways) extending from the floor to the ceiling or roof;"; and

(c) after the definition of "self-employed persons" there shall be inserted—

"smoking" includes having a lighted cigarette, cigar, pipe or any other smoking equipment and "smoke" shall be construed accordingly;".

Interpretation. 1974. c. 37.

8. In this Act, "the principal Act" means the Health and Safety at Work etc. Act 1974.

Short title, commencement and extent.

9.—(1) This Act may be cited as the Health and Safety at Work (Tobacco Smoking) Act 1993.

(2) This Act shall come into force on such a day as the Secretary of State may by order made by statutory instrument appoint, and different days may be appointed under this subsection for different purposes.

(3) This Act shall extend to Scotland.

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